

No. 9(1)82-6 Lab/6393.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s K. K. Spun Pipe, Tigaon Road, Ballabgarh.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,  
HARYANA, FARIDABAD

Reference No. 10/1981

between

SHRI VIJAY RAM, WORKMAN AND THE MANAGEMENT OF M/S K. K. SPUN PIPE,  
TIGAON ROAD, BALLABGARH

Present:—

Shri Darshan Singh, for the workman.

Shri R. L. Aneja, for the management.

#### AWARD

The State Government of Haryana referred the following dispute between the workman Shri Vijay Ram and the management of M/s K. K. Spun Pipe, Tigaon Road, Ballabgarh, by order No. ID/FD/94-80/4008, dated 22nd January, 1981, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Vijay Ram was justified and in order? If not, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed their pleadings. The following issues were framed by order dated 6th April, 1981 :—

- (1) Whether the workman was an employee of the management?
- (2) Whether the termination of services of Shri Vijay Ram was justified and in order? If not, to what relief is he entitled?

The workman examined Shri Itwari Shah as WW-1 and himself as WW-2. The management Shri Iswar Chand Partner as MW-1, Shri Om Parkash Proprietor of M/s Ravi Oil Mills as MW-2 examined and Shri Partap Chowkidar as MW-3.

#### Issue No. 1.

WW-1 deposed that he knew the concerned workman. When he was Chowkidar in M/s K. K. Spun Pipe, the workman was employed there. In cross examination he replied that at present he was not working in K. K. Spun Pipe. He had left the job three years past. At that time no gate pass was issued in the factory. The workman was a monthly rated workman. He denied the suggestion that the workman used to work with Kundan Lal Kedar Nath Cement Agent. WW-2 the concerned workman deposed that he had submitted demand notice Ex. W-1 to the management. Copy of ESI Card was Ex. W-2. His service was terminated because he had demanded increase in wages. He used to work with Chhote Lal Mistry as helper. Ex. W-3 bears the signature of Shri Sita Ram. He was not issued leave card or attendance card by the management. He used to receive his wages on a separate paper. In cross-examination he stated that he joined service in June, and July 1977. Shri Sita Ram was accountant of the factory who used to mark his attendance. Shri Sita Ram had left the factory in 1978. He had picked Ex. W-3 from the place where the record of the company was being burnt. It was about 3 years back. He had received E. S. I. Card after two or three months of service. He never got E. S. I. leave during the service. He denied the suggestion that he used to work in a firm of Shri Kundan Lal. MW-1 deposed that the concerned workman had never worked for the last four years in factory. The management had not engaged any manufacturing work since 1980. There is no other firm within the premises of the factory. In cross-examination he replied that he had leased out K. K. Spun Pipe to M/s Standard Pipe Corporation. At the time of leasing out the factory, there was no workman except a Chowkidar, clerk and supervisor. There were about 7 workers in April, 1980 who left the service of their own will. E. S. I. was applicable in the factory but could not tell E. S. I. Code Number. He did not know whose code number was given on Ex. W-2. But it was not of his firm. He did not know the concerned workman. MW-2 stated that he knew the concerned workman for the last about three years. Who worked as labourer. MW-3 stated that the concerned workman never worked in factory when he was working there.

In argument, learned representative for the workman argued that documents Ex. W-2 and Ex. W-3 he relied which proved that the workman was an employee of the management. On the other hand, the learned representative for the management argued that burden was upon the workman to establish the employee and employer relationship but workman did not produce any evidence to establish the relationship. He contended that Ex. W-2 did not contain the name of employer and Ex. W-3 was of the month of July, 1977. It was not proved by producing subscribe of the documents. Therefore it could not be relied upon in evidence. He cited AIR Supreme Court page 1885 which held that mere marking of document as an exhibit does not dispense with its proof. He pointed out this document even otherwise was of July, 1977.

I have gone through the file and find that the E. S. I. identity card Ex. W-2 bear the name Bijay Ram, S/o Shri Satto Ram. Date of entering into service was given as 4th July, 1977. The workman fails to produce any connecting evidence to show that code number was that of the present employer. He could have summoned the records of Local E. S. I. office but he did not do so. Presumption goes against the workman because he did not produce the available evidence in this behalf. As regards the copy Ex. W-3 I am unable to reply of it either because it has been not proved by producing the writer or signatory of the document. This issue is therefore, decided against the workman.

The reference fails on this sole ground. Therefore I give my award that the workman was not entitled to any relief.

M. C. BHARDWAJ,

Presiding Officer, Industrial Tribunal,  
Haryana, Faridabad.

Endorsement No. 633, dated the 18th June, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer, Industrial Tribunal,  
Haryana, Faridabad.

No. 9(1) 82-6Lab/6394.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947. (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s. K. K. Spun pipe, Tigaon Road, Ballabgarh:—

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,  
HARYANA, FARIDABAD.

Reference No. 12/1981

between

SHRI ARJUN WORKMAN AND THE MANAGEMENT OF M/S K. K. SPUN PIPE,  
TIGAON ROAD, BALLABGARH.

Present:—

Shri Darshan Singh, for the Workman.

Shri R. L. Anuja, for the management.

#### AWARD

The State Government of Haryana referred the following dispute between the workman Shri Arjun and the management of M/s K. K. Spun pipe, Tigaon Road, Ballabgarh, by order No. ID/FD/94/80/3996, dated 22nd January, 1981, to this Tribunal, for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947.—

Whether the termination of services of Shri Arjun was justified and in order? If not, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed their pleadings. The following issues were framed by my order dated 6th April, 1981:—

- 1) Whether the workman was an employee of the management?
- 2) Whether the termination of service of Shri Arjun was justified and in order? If not, to what relief is entitled?

The workman examined himself as WW-1 and Shri Itwari Shah as WW-2. The management examined Shri Ishwar Chand Partner as MW-1, Shri Om Parkash proprietor of M/s Ravi Oil Mills as MW-2 and Shri Partap Chowkidar as MW-3. Arguments were heard.

Issue No. 1:—

WW-1, the concerned workman stated that he joined services of the management on 13th November, 1978. His demand notice was Ex.W-1. His E.S.I. card was Ex.W-2. He had raised the demand of increase in wages, therefore his service was terminated. The name of chowkidar was Itbari Shah. In cross-examination, he replied that he was not issued appointment letter. He never took E.S.I. medical leave. He has no proof with him to show that he was an employee of the management. He was helper in the factory. He admitted that he used to live in the quarter of Shri Ganu Ram. WW-2 stated that he was chowkidar in the factory of the management. The concerned workman was also working there. He had left the job three years back. In cross-examination he denied the suggestion that the concerned workman never worked in the factory. MW-1 deposed that the concerned workman had never worked for the last four years in the factory. The management had not engaged in any manufacturing work since 1980. There is no other firm within the premises of the factory. In cross-examination, he replied that he had leased out K. K. Spun Pipe to M/s Standard Pipe Corporation. At the time of leasing out the factory, there was no workman except a chowkidar, clerk and supervisor. There were about 7 workers in April, 1980 who left the service of their own will. E.S.I. was applicable in the factory but he could not tell E.S.I. Code number. He did not know whose code number was given on Ex. W-2. But it was not of his firm. He did not know the concerned workman. MW-2 stated that he knew the concerned workman for the last about three years. He worked as labourer. MW-3 stated that the concerned workman never worked in the factory when he was working there.

In argument, learned representative for the workman argued that documents Ex.W-2 be relied which proved that the workman was an employee of the management. On the other hand, the learned representative for the management argued that burden was upon the workman to establish the employee and employer relationship but workman did not produce any evidence to establish the relationship. He contended that Ex.W-2 did not contain the name of employer. It was not proved by producing subscribe of the documents. Therefore it could not be relied upon in evidence. He cited AIR Supreme court page 1885 which held that mere marking of documents as an exhibit does not dispense with its proof.

I have gone through the file and find that E.S.I. identity card Ex.W-2 bear the name of Shri Anjune Ram S/o Shri Kali Jman Ram. Date of entering into service was given as 13th November, 1978. The workman fails to produce any connecting evidence to show that code number was that of the present employer. He could have summoned the records of local E.S.I. Office but he did not do so. Presumption goes against the workman because he did not produce the available evidence in this behalf. Therefore, this issue is decided against the workman.

The reference fails on this sole ground. Therefore, I give my award that the workman was not entitled to any relief.

M. C. BHARDWAJ,

Presiding Officer,

Industrial Tribunal, Haryana, Faridabad.

Endorsement No. 634, dated 18th June, 1982

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,

Industrial Tribunal, Haryana, Faridabad.

No. 9(182-6Lab./6395.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Fabrication and Allied Products, Sector 4, Faridabad (Faridabad).

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,  
HARYANA, FARIDABAD.

Reference No. 217/1981

between

SHRI MADAN LAL, WORKMAN AND THE MANAGEMENT OF M/S FABRICATION AND  
ALLIED PRODUCTS, SECTOR-4, FARIDABAD

Present.—

Shri Sunheri Lal for the workman.

Shri R. C. Sharma for the management.

## AWARD

The State Government of Haryana referred the following dispute between the workman Shri Madan Lal and the management of M/s Fabrication and Allied Products, Sector-4, Faridabad by order No. FD/FD/62/81/32063, dated 3rd July, 1981, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Madan Lal was justified and in order? If so, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed their pleadings. The following issues were framed by my order dated 21st September, 1981:—

- (1) Whether the reference is premature and bad? If so, to what effect?
- (2) Whether the termination of services of Shri Madan Lal was justified and in order? If so, what relief is he entitled?

The management examined Shri Mukand Lal Foreman as MW-1, Shri Chander Babadur Shaperman as MW-2, Shri Gurcharan Store Assistant, as MW-3 and Shri Rajiv Virmani Partner as MW-4. The workman examined himself as MW-1 and Shri Lal Chand as WW-2. Arguments were heard.

*Issue No. 1.*

MW-3 deposed that the workman was suspended on 7th December, 1982. The suspension was marked upto 26th April, 1981 in the attendance register. The concerned workman stated that he had made a complaint to the Labour Inspector, copy of which was Ex. W-3. The Labour Inspector had told him to submit his demand notice because he was dismissed. Therefore he submitted his demand notice on 1st April, 1981. He admitted in cross-examination that he had received Ex. M-6 in the Month of June.

Learned representative for the management argued that the demand notice was dated 4th April, 1981 and workman was in the employment of the management upto June, 1981. Therefore, the reference was premature. On the other hand, learned representative for the workman argued that the complaint was made to the Labour Inspector and he had advised the workman to issue a demand notice. It was further contended by him that the management did not submit any comments or made verbatim statement before the conciliation Officer when they were called upon in the conciliation proceedings on behalf of the said demand notice. He argued that show cause notice dated 12th June, 1981 was an after thought.

I have given my thoughtful consideration to the respective contention of the parties and find that the workman had made a complaint to the Labour Inspector which was dated 19th December, 1980 in which he had given that he was being harassed by the management because he had constituted a union of workers. It was alleged that he had been placed under suspension and no enquiry was being held. From the conciliation report Ex. W-11, it appears that meetings of the parties were fixed for 1st May, 1981, 14th May, 1981, 21st May, 1981. The management appeared only on 14th May, 1981 but did not submit any written reply or verbal statement in respect of demand notice. No doubt that the management sent a registered show cause notice copy Ex. M-6 on 12th June, 1981 to the workman, the last letter from the enquiry office to the workman was dated 13th February, 1981 in which the workman was called upon to attend the domestic enquiry on 19th February, 1981 at 11.00 A.M. It was further added in case he failed to attend he will be proceeded *ex parte* whereas the workman produced copy of letter Ex dated 18th February 1981 Ex. W-14 in which he contended that domestic enquiry was fixed for 13th February, 1981. He attended the factory at the appointed time alongwith his representative. He waited there for one hour and made a written request to inform him for the next date but no information was given to him. This letter was sent,—vide postal receipt Ex. M-15. The management was failed to explain the gap between 19th February, 1981 to 12th June, 1981. Therefore I think that letter dated 12th June, 1981 is an after thought because the management was known of the demand notice and dates of conciliation meeting. The demand notice, therefore, cannot be termed as premature. This issue is, therefore, decided against the management.

*Issue No. 2.*

MW-1 deposed that the concerned workman was doing duty of gas cutter. He was paid wages for the month of October last without taking any work from him. He further stated that it was about 8.30 A.M. that the workman was given work of gas cutting. The workman demanded Shri Bhola helper. He was informed that Shri Bhola was not idle, there upon he left the cutting job and told in insolent Language that he will not work. He had already availed of one month

wages without work. In the mean time Shri Rajiv appeared. He did not know what transpired between Shri Rajiv and workman because he had gone to allot the work to other workers. In cross-examination, he replied that designation of the workman was helper. Shri Sarvjeet and Bhola were also helpers. He denied the suggestion that Shri Dharmbir, Ramesh Chander, Udey Ram Bhagwati Singh, Jodhan Bindh and Lal Chand were also chargesheeted alongwith the concerned workman on 6th October, 1980. He did not know if they had failed an application before the payment of wages authority and were paid three days wages. He further replied that he had not made written complaint in this behalf against the concerned workman. He admitted as correct that the workman was suspended for disobedience of his orders. He had also admitted that Shri K. L. Dixith had also conducted the domestic enquiry against the workman. He also admitted that he had appeared as witness in the domestic enquiry. MW-2 deposed that the workman used to do the job of gas cutting. He was made to sit at the gate by the management last year but he did not know reason of the same. He had not heard anything about any incident between Shri Mukand Lal and Madan Lal workmen. MW-3 stated that the workman was made to sit at the gate in September, 1989. He was paid full wages for the period as he marked present. He was made to sit because he had refused to work. He was suspended from 7th December, 1980. His name was struck off on 18th June. In cross-examination, he replied that the designation of the workman was helper. He was given job of gas cutting which he had refused to do. Therefore he was suspended. He was not suspended in the month of September. He was issued charge-sheet. Ex. W-2 was written to the workman by him. MW-4 deposed that the workman was helper. He worked on the job of gas cutting. He refused to work, therefore he was made to sit at the factory gate for a month. The workman was issued Ex. W-1. He further stated that on 7th December at about 8.00 a.m. MW-1 had given him the job of gas cutting. He was given Samarjit helper. The concerned workman refused to work with Samarjit helper and asked that he should be given Shri Bhola Nath helper. The foreman reported about the insolent language used by the workman. When he was called by him the workman did not behave properly. He discussed the matter with a senior partner who issued Ex. M-1. The reply of the workman was Ex. M-2. Letter Ex M-3 was issued by him which was replied by the workman,—vide Ex M-4. Ex. M-5 was issued by his father. Domestic enquiry was held but it was not proper. Therefore it was not filed. In cross-examination, he replied that the enquiry was held by Shri K. L. Dixith. Letters EE, W-3 to 7 were issued by the Enquiry Officer. He was not supplied letter Ex. W-10. Letter Ex. W-11 might have been received in the factory.

I have gone through the pleadings and find in the written statement, Para-2, the management stated that the termination of service Shri Madan Lal was effected after fair and proper enquiry but proceeding of the enquiry were not placed on file nor the enquiry officer was examined, rather MW-4 stated that the enquiry was not proper, therefore, papers were not filed in the proceedings. In the show cause notice dated 12th June, 1981 it was contended by the management that proper enquiry was held by the Shri K. L. Dixith and after going through the domestic enquiry, it was decided to issue a show cause notice as to why the workman should not be dismissed from service. It is to you surprised that no dismissal letter was produced by the management nor any such letter was issued to the concerned workman. The management has blown hot, cooled in the same breath by stating the enquiry to be fair and proper in the pleadings and then to be improper while appearing in the witness box. I also fail to understand as to how the concerned workman was given the job of gas cutting in which a helper was required when he was himself a helper. Reply to the charge-sheet,—vide Ex. M-M-4, the workman alleged that he was maltreated by the management on 7th December, 1980 and turned out of the factory gate. It was also into evidence that this workman was made to sit outside factory for full month without work and he was paid full wages. From the evidence on record, I find that no proper disciplinary proceeding were held and proved by the management so much so even no dismissal letter was issued to the workman in the absence of which he continued to be in the service. In the circumstances, I passed my award that the workman entitled to re-instatement with full back wages and with continuity of service.

M. C. BHARDWAJ,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

Endst. No. 635, dated the 18th June, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.